

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JESSICA R.,

Plaintiff,

v.

Civil Action No.
3:19-CV-1344 (DEP)

ANDREW SAUL, Commissioner of
Social Security,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

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FOR DEFENDANT

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DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff

seeks judicial review of an adverse administrative determination by the Commissioner of Social Security (“Commissioner”), pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on February 24, 2021, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner’s determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court’s oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

ORDERED, as follows:

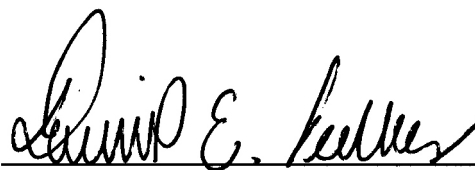
- 1) Defendant’s motion for judgment on the pleadings is

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

GRANTED.

2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: March 2, 2021
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
JESSICA R.,

Plaintiff,

vs.

3:19-CV-1344

ANDREW SAUL,
Commissioner of Social Security,

Defendant.
-----x

DECISION held on February 24, 2021
before the HONORABLE DAVID E. PEEBLES
United States Magistrate Judge, Presiding

APPEARANCES (by telephone)

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1 THE COURT: Let me begin by thanking both counsel
2 for excellent presentations. I enjoyed working with you.

3 Plaintiff has commenced this proceeding pursuant to
4 42, United States Code, Sections 405(g) and 1383(c)(3) to
5 challenge an adverse determination by the Commissioner of
6 Social Security.

7 The background is as follows. Plaintiff was born
8 in July of 1991. She is currently 29 years of age. She was
9 25 years old at the time of the alleged onset -- or, the
10 amended alleged onset date of August 1, 2016. Plaintiff
11 stands approximately 5-foot 2-inches in height, and has
12 weighed between 245 and 250 pounds at various points.
13 Plaintiff is single and has no children. She lives in
14 Binghamton in an apartment with her mother. Plaintiff is
15 right-handed. She has no driver's license.

16 Plaintiff has a high school education. She
17 received an IEP diploma and was in special education classes
18 where she was classified apparently as learning disabled.
19 She also attended two semesters at Broome Community College.
20 She did receive some accommodations due to her psychological
21 conditions at the college, and ultimately stopped going or
22 attending out of frustration. Plaintiff also participated in
23 a Catholic Charities Work Training Program.

24 Plaintiff stopped working in August of 2015 while
25 she was undergoing work training in a cafe. Her past work

1 includes as a cashier in various settings, a cleaner, and an
2 overnight stocker. The Administrative Law Judge concluded
3 that none of those positions constituted substantial gainful
4 activity.

5 Plaintiff physically suffers from a lower back
6 issue, obesity, and hypertension. The hypertension appears
7 to be medically controlled. In terms of her back, an X-ray
8 from August 12, 2016, that appears at 390 of the
9 Administrative Transcript, showed moderate degenerative
10 spondylosis, meaning disc space narrowing and osteophyte
11 formation, at L1-L2, but no compression fracture. The
12 impression is listed as, quote, "degenerative changes."

13 The plaintiff suffers from mental impairments that
14 have been variously described, and including as low
15 borderline intellectual functioning. Testing at one point
16 revealed a full scale IQ of 70. Bipolar disorder, borderline
17 personality disorder, schizo-affective disorder, adjustment
18 disorder with depressed mood. She has a history of cutting,
19 suicide attempts and ideation, homicidal ideation, auditory
20 hallucination, paranoid delusions.

21 She treats primarily with UHS Primary Care where
22 she sees Physician Assistant Erica Hill and has since March
23 of 2016. She has treated with Dr. Sobia Mirza, a
24 psychiatrist, who she sees one time per month and has for
25 roughly four years, as well as LMSW Megan Hagerbaumer, who

1 she also sees approximately one time per month and has for
2 four years.

3 As plaintiff's counsel pointed out, the record
4 reveals several hospitalizations for psychiatric conditions,
5 including October 13, 2014 to November 1, 2014, that's at 354
6 of the Administrative Transcript. There is reference to
7 December 2, 2014 at 354 to 356. April 25, 2016 to April 29,
8 2016, she was hospitalized, that's at 336 and 635, for
9 cutting her wrist. She had been drinking and engaged in a
10 family argument which appears to have precipitated that
11 hospitalization. She was hospitalized between June 28 and
12 June 30, 2016. That's at 402 to 404, 333 to 336, and 635 of
13 the Administrative Transcript. That was precipitated by
14 suicidal thoughts brought on because her ex-boyfriend moved
15 into the same apartment complex that she was living in with a
16 new girlfriend. There were also hospitalizations in March of
17 2017 for suicidal thoughts. That's at 400 and 635. She was
18 apparently sent to the hospital by her psychiatrist. She was
19 hospitalized in April, late April to early May of 2017,
20 that's at 398 and 638, with auditory hallucinations and
21 persecutory delusions. Again hospitalized in January 2019
22 with suicidal and homicidal thoughts and depression.
23 Apparently that was precipitated by an argument with
24 plaintiff's aunt.

25 Plaintiff has been prescribed several medications,

1 including Citalopram, Metoprolol, Trazodone, Mirtazapine,
2 Olanzapine, Ibuprofen, Tylenol, Remeron, Celexa, Latuda, and
3 a muscle relaxant.

4 In terms of activities of daily living, plaintiff
5 is able to shower, dress, shop with her mother. She does
6 some walking. She does some laundry. She does -- I'm sorry,
7 some cooking, not walking; I can't read my own notes. Some
8 laundry. She cleans, sweeps, mops, vacuums, takes out the
9 garbage, watches television, listens to music. She smokes
10 approximately two cigarettes per day.

11 Procedurally, plaintiff applied for Title II and
12 Title XVI benefits on June 14, 2016, alleging an onset date
13 of January 1, 2013. The onset date was later amended on
14 advice of counsel or with advice of counsel to August 1,
15 2016, which took out of play the Title II application,
16 leaving only the Supplemental Security Income, or SSI,
17 application.

18 A hearing was conducted on October 10, 2018, by
19 Administrative Law Judge Elizabeth Koennecke. A supplemental
20 hearing with a vocational expert was conducted on March 11,
21 2019. ALJ Koennecke issued a decision on March 19, 2019,
22 that was adverse to the plaintiff. That became a final
23 determination of the Agency on September 17, 2019, when the
24 Social Security Administration Appeals Council denied
25 plaintiff's request for review.

1 This action was commenced on October 31, 2019. The
2 Commissioner does not argue that it is untimely, and it
3 appears to the Court that it is, in fact, timely.

4 In her decision, ALJ Koennecke applied the familiar
5 five-step sequential test for determining disability.

6 She found that plaintiff had not engaged in
7 substantial gainful activity since August 1, 2016.

8 At step two, ALJ Koennecke concluded that plaintiff
9 does suffer from mental impairments that have been variously
10 characterized, and she does not specify precisely what
11 impairments she is considering, although she does state that
12 plaintiff claims disability due to depression, learning
13 disability, schizophrenia, personality disorder, and bipolar
14 disorder in terms of the mental impairments.

15 At step three, ALJ Koennecke concluded that
16 plaintiff's conditions do not meet or medically equal any of
17 the listed presumptively disabling conditions set forth in
18 the Commissioner's regulations, specifically considering
19 listings 12.03, 12.04, 12.06 and 12.08, all of which address
20 mental impairments or psychological impairments. The
21 conclusion was that the B criteria and the C criteria of
22 those regulations were not met. She also considered listing
23 12.04 and found a low IQ, but no diminishment or deficits in
24 adaptive functioning.

25 At the next stage, ALJ Koennecke concluded that

1 plaintiff is capable of performing a full range of work at
2 all exertional levels, with the following limitations
3 addressing her mental or psychological impairments. The
4 claimant has the very basic capacity to read, spell, or
5 perform mathematical calculations. The claimant retains the
6 ability to: Understand and follow simple instructions and
7 directions; perform simple tasks independently; maintain
8 attention and concentration for simple tasks; regularly
9 attend to a routine and maintain a schedule; handle simple,
10 repetitive work-related stress in that she can make
11 occasional decisions directly related to the performance of
12 simple tasks in a position with consistent job duties that
13 does not require the claimant to supervise or manage the work
14 of others; should avoid work requiring more complex
15 interaction or joint effort to achieve work goals, for
16 example, work performed alone except for normal supervision;
17 can have no contact with the public.

18 At step four, Administrative Law Judge Koennecke
19 concluded that plaintiff does not have any past relevant work
20 to consider, and thus proceeded to step five.

21 With the assistance of testimony from a vocational
22 expert, who was given a hypothetical that paralleled the
23 residual functional capacity finding, the Administrative Law
24 Judge concluded that plaintiff is capable of performing
25 available work in the national economy, and cited

1 representative occupations of hand packager, laundry worker,
2 and industrial cleaner, and thus concluded that plaintiff was
3 not disabled at the relevant times.

4 The standard of review, as the Commissioner has
5 argued, in this case is extremely deferential. My job is to
6 determine whether correct legal principles were applied and
7 that the resulting determination is supported by substantial
8 evidence. Substantial evidence, of course, is defined as
9 such relevant evidence as a reasonable mind would consider
10 sufficient to support a conclusion or finding. The Second
11 Circuit Court of Appeals in *Brault versus Social Security*
12 *Administration Commissioner*, 683 F.3d 443, noted that the
13 test is extremely stringent, more so than the clearly
14 erroneous standard that lawyers are familiar with. The Court
15 noted in *Brault* that under this standard once an ALJ finds
16 facts, those facts can be rejected only if a reasonable
17 fact-finder would have to conclude otherwise.

18 The plaintiff in this case raises two basic
19 contentions, both of which affect the step five
20 determination, because if accepted, the errors would result
21 in a finding that the hypothetical posed to the vocational
22 expert was flawed. The first relates to the failure to find
23 a physical impairment at step two focusing on plaintiff's
24 lumbar back condition. The second attacks the residual
25 functional capacity finding and the weighing of medical

1 opinions in the record.

2 Turning first to the step two determination, the
3 focus is on Dr. Jenouri's report, which appears at 386 to 389
4 of the Administrative Transcript, as well as the X-ray taken
5 on August 12, 2016. That is reported at page 390.

6 Undoubtedly and undeniably the second step of the sequential
7 analysis is a modest step and a modest hurdle to surpass.

8 The governing regulation provides that an impairment or
9 combination of impairments is not severe if it does not
10 significantly limit claimant's physical or mental ability to
11 do basic work activities; 20 CFR Section 404.1521(a), and
12 there is a corresponding regulation in the Section 416
13 series.

14 The Second Circuit requirement is de minimis and
15 intended only to screen out the truly weakest of cases; *Dixon*
16 *versus Shalala*, 54 F.3d 1019 (2nd Cir. 1995). However, the
17 mere presence of a disease or impairment, or establishing
18 that a person has been diagnosed or treated for disease or
19 impairment, is not by itself sufficient to establish a
20 condition as severe; *Coleman versus Shalala*, 895 F.Supp. 50
21 (S.D.N.Y. 1995).

22 The Administrative Law Judge rejected the
23 plaintiff's back injury as severe at page 18 and discussed
24 why. The first question is, assuming that there is error at
25 step two, would the error be harmless. Dr. Jenouri in his

1 opinion at page 389 found a moderate restriction in walking,
2 standing, sitting long periods, bending, stair climbing,
3 lifting, and carrying, which, of course, could have
4 potentially affect the residual functional capacity, but that
5 was given limited weight. There is no exertional limitation
6 in the RFC.

7 As plaintiff argues, the three jobs specified in
8 the Administrative Law Judge's determination are all in the
9 medium exertional range. Medium work involves lifting no
10 more than 50 pounds at a time with frequent lifting or
11 carrying of objects weighing up to 25 pounds. The regulation
12 goes on to state, "If someone can do medium work, we
13 determine that he or she can also do sedentary and light
14 work." 20 CFR Section 404.1567(c).

15 The plaintiff relies on *Giddings* for the
16 proposition that -- *Giddings versus Astrue*, 333 F.App'x 649,
17 (2d Cir. 2009), for the proposition that Dr. Jenouri's
18 opinion, which stands uncontradicted by any other medical
19 opinion that would support the RFC, cannot be overridden
20 unless there is overwhelmingly compelling reasoning given. I
21 note that the Commissioner in this and several other cases
22 has asked the Court to declare that the Second Circuit's
23 overwhelmingly compelling reasoning standard has been
24 abrogated, but I respectfully decline that invitation and
25 note that as recently as 2020 the Second Circuit was still

1 using that standard.

2 The defendant relies on *Pellam; Pellam versus*
3 *Astrue*, 508 F.App'x 87 (2d Cir. 2013). That case is somewhat
4 distinguishable, though, because while the consultative
5 examiner's opinion was rejected in that case, the RFC finding
6 was actually consistent with the opinion.

7 As I indicated, the Administrative Law Judge at 18
8 and 19 gave Dr. Jenouri's opinion limited weight. The
9 reasoning cited includes the fact that there was no
10 compression fracture revealed in the X-ray, there was
11 extremely conservative treatment demonstrated in the record.
12 Plaintiff treated her back condition with over-the-counter
13 medications, including Tylenol, Ibuprofen, and muscle
14 relaxers. She in many instances described her pain as zero
15 on a scale of zero to ten, including at 435, 440, 445, 456,
16 467, and 624 of the Administrative Transcript. She also
17 described at page 370 her condition, back condition is stable
18 without radiation. She also apparently has engaged walking
19 and exercises.

20 So in terms of the step two argument, I find that
21 the reasoning cited by Administrative Law Judge Koennecke
22 meets the overwhelmingly compelling standard for discounting
23 Dr. Jenouri's opinion.

24 Turning to the second argument, the argument first
25 surrounds the residual functional capacity finding of the

1 Administrative Law Judge. Claimant's RFC represents the
2 finding of the range of tasks she is capable of performing
3 notwithstanding the impairments at issue; 20 CFR Section
4 416.945(a). An RFC determination is informed by
5 consideration of all of the relevant medical and other
6 evidence. The ascertaining of an RFC details both assessment
7 of exertional capabilities as well as non-exertional
8 limitations or impairments. And, of course, any RFC
9 determination must be supported by substantial evidence.

10 When it comes to weighing medical opinions, there
11 is also an overarching consideration that the weighing of
12 conflicting opinions in the first instance is a matter
13 entrusted to an Administrative Law Judge, under *Veino versus*
14 *Barnhart*, 312 F.3d 578, 588 (2d Cir. 2002). The mental and
15 cognitive issues are what is front and center in this case.
16 The weight to be given to medical opinions under the former
17 regulations governing applications filed prior to March of
18 2017 is addressed at 20 CFR Section 416.927(c).

19 The first opinion at issue is by Dr. Sobia Mirza
20 from September 5, 2018. That appears at 595 and 596 of the
21 Administrative Transcript. The opinion reflects a marked
22 limitation in maintaining regular attendance without
23 interruptions from psychological based symptoms. I think
24 that probably should be psychological based symptoms. Marked
25 is defined as, "There is a serious limitation in this area.

1 There is a substantial loss in the ability to effectively
2 function, the loss would be greater than 33 percent." There
3 is also medium limitation in Dr. Mirza's report in the fields
4 of maintaining attention and concentration, and ability to
5 interact appropriately with the general public.

6 The opinion of Dr. Mirza was addressed at page 21
7 of the Administrative Transcript and it was given limited
8 weight. The reasons cited include that it is based solely on
9 plaintiff's reports. There is no indication that plaintiff
10 was frequently absent from counseling, and therefore in the
11 Administrative Law Judge's view, that would translate into a
12 finding that she would also not likely be absent from work.
13 She also pointed out that Dr. Mirza was not able to fully
14 assess mental functioning, according to her own medical
15 source statement, and that it was not supported by objective
16 evidence, including the many denials by plaintiff of
17 psychological symptoms, psychiatric symptoms, and plaintiff's
18 statements that her symptoms were controlled with
19 medications.

20 The factors to be considered under the former
21 regulations, specifically Section 416.927, are well-known.
22 They are the so-called *Burgess* factors in the Second Circuit.
23 The Second Circuit has noted, however, in *Estrella versus*
24 *Berryhill*, 925 F.3d 90, from May of 2019, that the failure to
25 consider explicitly the *Burgess* factors is not necessarily

1 fatal if a searching review of the record assures that the
2 treating physician rule is not violated.

3 Of course, as plaintiff argues, Dr. Mirza appears
4 to qualify as a treating source, and ordinarily the opinion
5 of a treating source or treating physician or acceptable
6 medical source under the former regulations regarding the
7 nature and severity of an impairment is entitled to
8 considerable deference if it is supported by medically
9 acceptable clinical and laboratory diagnostic techniques and
10 is not inconsistent with other substantial evidence. Such
11 opinions are not, however, controlling if they're contrary to
12 other substantial evidence in the record, including the
13 opinions of other medical experts.

14 And, of course, as I previously noted, where there
15 are conflicts, the resolution is properly entrusted under
16 *Veino* to the Commissioner. If controlling weight is not
17 given to a treating source opinion, the *Burgess* factors must
18 be addressed and there must be an indication of what weight,
19 if any, is given to a medical source opinion.

20 In this case the form is a check-box form with no
21 explanation provided. I do note that defendant argues that
22 the reliance solely on the subjective complaints of a
23 plaintiff is not a proper basis to reject those opinions.
24 Those cases that are cited are *Roma versus Astrue*, 468
25 F.App'x 16, and *Dailey versus Commissioner of Social*

1 Security, 2016 WL 922261 (N.D.N.Y February 2016) .

2 I might agree with that when it comes to a physical
3 impairment, but in terms of a mental impairment, it's fairly
4 clear that plaintiff's statements and the observations of
5 medical professionals are important to consider as plaintiff
6 has argued. *Flynn versus Commissioner of Social Security*
7 *Administration*, 729 F.App'x 119 (2018) supports that
8 conclusion, as well as *Stacey versus Commissioner of Social*
9 *Security Administration*, 799 F.App'x 7 (2020) .

10 So I reject this part of the Commissioner's
11 argument. However, I do find that the reasoning of the
12 Administrative Law Judge for giving limited weight to
13 Dr. Mirza's opinion is explained sufficiently when you read
14 the decision as a whole, which goes through considerably the
15 treatment received. I find the reasoning is well set out and
16 a searching review of the record convinces the Court that the
17 treating source rule is not violated in connection with
18 Dr. Mirza's opinions.

19 The next opinion cited by the plaintiff is from
20 Counselor Hagerbaumer, and that was given on August 21, 2018.
21 It appears at 405 to 406 of the Administrative Transcript.
22 It is extremely unclear because on both pages the counselor
23 has drawn a line through the check-box areas and written,
24 quote, "unable to assess per clinic policy," but then she
25 goes ahead and finds extreme limitations in certain areas,

1 including accepting instructions and responding appropriately
2 to criticism from supervisors, getting along with co-workers,
3 ability to respond appropriately to ordinary stressors in a
4 work setting with simple tasks.

5 The counselor also notes sporadic suicidal ideation
6 and history of auditory hallucinations, but states that the
7 main issue is her inability to cope with her reactions caused
8 by external stressors. She also has a learning disability
9 which causes limitations in her daily functioning. To some
10 degree, as the Commissioner has noted, these limitations are
11 accommodated in the residual functional capacity finding. I
12 note that under the former regulations, the counselor is not
13 an acceptable medical source and her opinions are, therefore,
14 not subject to the treating source rule.

15 I agree that there seems to be a disparity between
16 the statement that she cannot assess and the finding that she
17 did, in fact, assess. But as I said, the concerns appear to
18 be the effect of stressors and her learning disability, and
19 as I said, those are accommodated in the residual functional
20 capacity. She is also limited in her interaction with
21 others, including the public and her supervisor, and those
22 are accommodated as well in the residual functional capacity
23 finding. So I find no error in consideration of this report.

24 The next report considering plaintiff's psychiatric
25 conditions is the report of consultative examiner, Dr. Sara

1 Long, a psychologist, and it appears at 392 to 396 of the
2 Administrative Transcript, and the results from a
3 consultative examination on August 16, 2016. The medical
4 source statement finds, "Mild to moderate limitations
5 regarding following and understanding simple directions and
6 performing simple tasks. She was able to maintain attention
7 and concentration. She appears able to maintain a regular
8 schedule. She is able to learn some new tasks. Regarding
9 complex tasks and making appropriate decisions, there appear
10 to be marked limitations. It is not clear that she is
11 relating adequately to others. Her psychiatric symptoms
12 might cause problems in this area. She presents with low
13 stress management." It goes on to say that, "The results of
14 the present evaluation appear to be consistent with
15 psychiatric history of substance abuse problems which appear
16 to interfere with her ability to function on a regular
17 basis."

18 The report of a consultative examiner such as
19 Dr. Long is entitled to weight and can provide substantial
20 evidence for a determination. The Administrative Law Judge
21 in this case afforded substantial weight, or significant
22 weight, I should say, to Dr. Long's opinions at pages 20 and
23 21 and also again discussed at page 22. The residual
24 functional capacity finding addressed many of the limitations
25 identified by Dr. Long, including judgment and relating to

1 others, and decision-making. As the Commissioner points out,
2 unskilled work requires little to no judgment; 20 CFR Section
3 416.968(a). The residual functional capacity finding once
4 again accounted for stress and the limitation on the
5 interaction.

6 So I find no error in the consideration of
7 Dr. Long's opinion, and I find that Dr. Long's opinion does
8 provide substantial weight to support the resulting
9 determination of the Commissioner.

10 The next decision considered or opinion considered
11 is that of Dr. S. Juriga, a psychologist. That appears at
12 Exhibit 3A. He is a non-examining state agency consultant.
13 His opinion was rendered in September of 2016.

14 He finds moderate limitation in several areas,
15 including ability to understand and remember detailed
16 instructions; the ability to carry out detailed instructions;
17 the ability to maintain attention and concentration for
18 extended periods; the ability to perform activities within a
19 schedule, maintain regular attendance, and be punctual within
20 customary tolerances; the ability to sustain an ordinary
21 routine without special supervision; the ability to perform
22 and to complete a normal workday and workweek without
23 interruptions; the ability to accept instructions and respond
24 appropriately to criticism from supervisors; and the ability
25 to get along with co-workers or peers without distracting

1 them or exhibiting behavioral extremes.

2 The summary of mental residual functional capacity
3 finding, which is what controls, appears 104 and 105 of the
4 opinion, and the summary is retains the ability to perform
5 entry level work, which, as the Commissioner has argued,
6 equates to simple unskilled work. It is true that there is
7 no explanation given in certain portions of the worksheet,
8 but the residual functional capacity is what controls once
9 again, and it's summary and conclusions support the residual
10 functional capacity.

11 Many of the moderate limitations are also accounted
12 for in the residual functional capacity. Granted, I would
13 like to see a more fulsome discussion in the residual
14 functional capacity finding, especially without explanation
15 or finding of certain of the moderately limited categories
16 set forth in the work sheet. But I find that it does
17 adequately address the residual functional capacity and
18 support the ability to perform unskilled entry level work,
19 which is the same; *Tollison versus Colvin*, 2013 WL 3367101,
20 from the Middle District of Tennessee, July 5, 2013, and
21 that's addressed at note 8. I find that the residual
22 functional capacity does pass muster. *Carver versus Colvin*,
23 600 F.App'x (10th Cir. 2015). It is well-accepted that a
24 non-examining consultative examiner's report can constitute
25 substantial evidence and overlie even a treating source if it

1 is properly supported. *Netter versus Astrue*, 272 F.App'x 54
2 (2d Cir. 2008).

3 As I indicated, it's well-accepted that moderate
4 limitations are not inconsistent with the ability to perform
5 unskilled work. *Richard H.*, 2020 WL 467734, from the
6 Northern District of New York, January 29, 2020. And in that
7 case the proposition is said to be supported by *Zabala v.*
8 *Astrue*, 595 F.3d 402, 410 (2d Cir. 2010). Plaintiff relies
9 on the Program Operations Manual Systems, or POMS, to argue
10 that the worksheet is not sufficiently detailed in this case,
11 and, of course, the POMS are not binding either on the
12 Commissioner or the Court. One focus of the plaintiff is the
13 inability of her to apply for and be hired for a job. As the
14 Commissioner's argued, that is not dispositive; 20 CFR
15 416.966.

16 I do note that the ALJ did not rely solely on
17 Dr. Juriga for her residual functional capacity finding. She
18 considered Dr. Long's opinion, as well as the entire record,
19 which is generally supported by treatment notes discussed at
20 length at pages 22 and 23 of the Administrative Transcript.
21 It is true that Dr. Juriga's opinions come from 2016 and
22 predate some of the psychological treatment and
23 hospitalizations, but when you consider the entire record, it
24 does not appear that there was a significant decline, and, in
25 fact, consideration of later treatment notes show some

1 improvement.

2 The last opinion discussed by the plaintiff is from
3 Dr. Krantweiss, Dr. Adam Krantweiss, from November 18, 2017.
4 It appears at pages 598 to 602 of the Administrative
5 Transcript, and it addresses the plaintiff's level of
6 intellectual functioning, academic achievement, and adaptive
7 behavior. There are several findings. One finding is it is
8 expected that she would not succeed across many work
9 settings, she cannot technically be classified as
10 intellectually disabled, and it indicated that she should be
11 limited to a job requiring very basic capacity to read, spell
12 words, or perform mathematical calculations.

13 The opinion was discussed at page 21 of the
14 Administrative Transcript by the ALJ and given limited
15 weight. It was noted that Dr. Krantweiss admitted that his
16 findings were speculative, but it also showed that plaintiff
17 has a basic ability to perform unskilled work, and the
18 limitations, the intellectual limitations that were cited are
19 accounted for in the residual functional capacity finding.
20 Once again, the act of finding of work is not relevant. 20
21 CFR Section 416.966, and *Morrow v. Astrue*, 2010 WL 3259988,
22 from the Northern District of New York, July 30, 2010, that's
23 addressed at footnote 5.

24 So I don't find any error in the consideration and
25 weighing of the various medical opinions in this case,

1 including those of treating source Dr. Mirza. The step five
2 finding of the Commissioner is supported by substantial
3 evidence. I find that the Commissioner did carry his burden
4 at that step by relying on the testimony of a vocational
5 expert who was posed a hypothetical that paralleled the
6 residual functional capacity finding, which I do find is
7 supported by substantial evidence.

8 I agree with the Commissioner that the Court is
9 simply unable to say that in this case no reasonable
10 fact-finder could conclude as the Administrative Law Judge
11 did; or put another way, a reasonable fact-finder would have
12 to conclude that plaintiff is incapable of performing the
13 work identified by the vocational expert.

14 So I will grant judgment on the pleadings to the
15 defendant and order dismissal of plaintiff's complaint.

16 Thank you both. Please stay safe.

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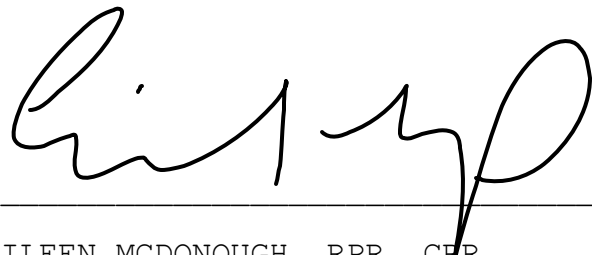
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C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Federal Official
Realtime Court Reporter, in and for the United States
District Court for the Northern District of New York,
do hereby certify that pursuant to Section 753, Title 28,
United States Code, that the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.

A handwritten signature in black ink, appearing to read 'Eileen McDonough', is written over a horizontal line.

EILEEN MCDONOUGH, RPR, CRR
Federal Official Court Reporter